SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1241

JESS CANCINO,
Plaintiff,

v.

WALTER E. CRAVEN, Warden,
Defendant.

In Re: ROGER S. HANSON,
Attorney at Law.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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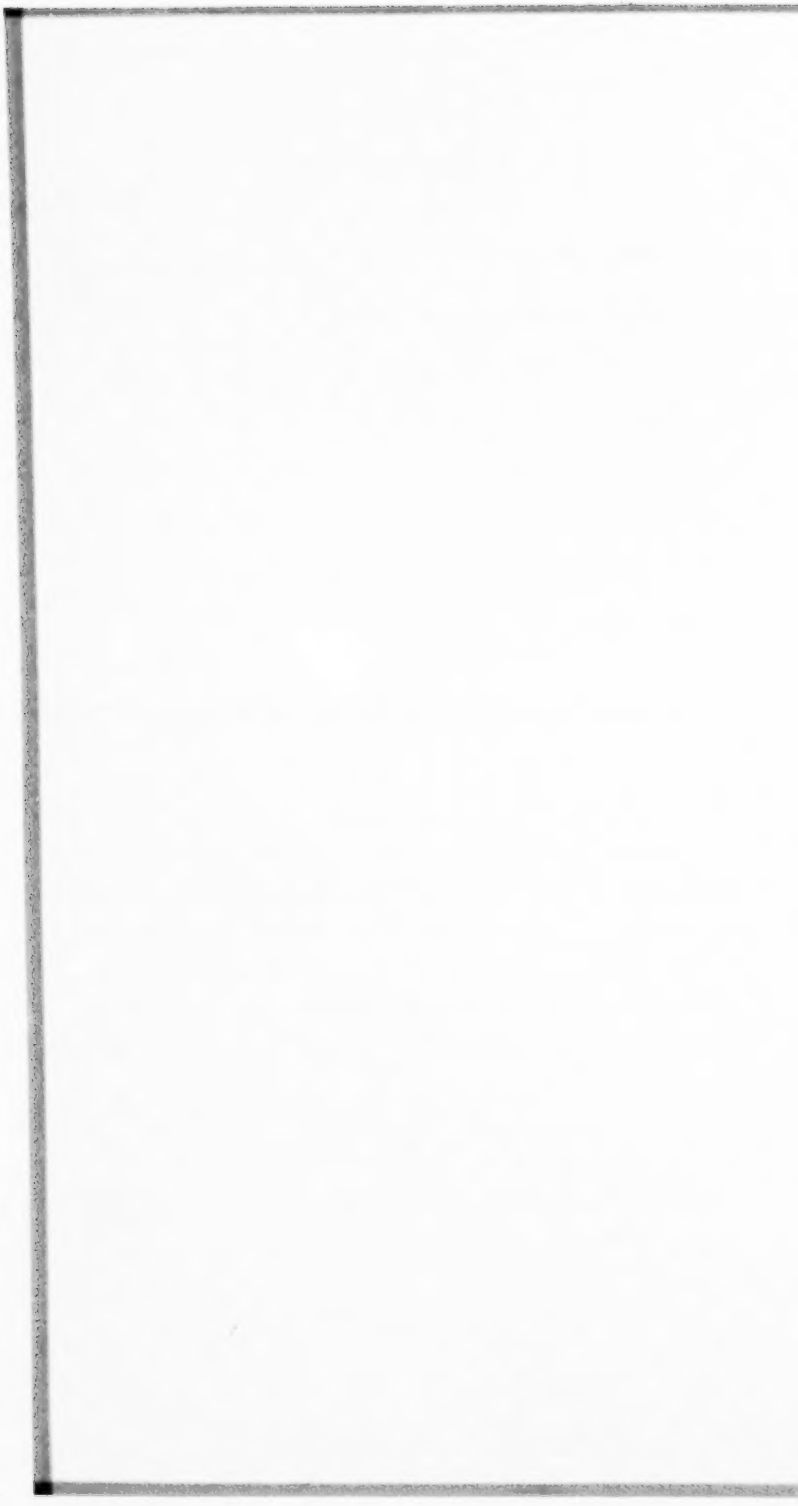
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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is published at 511 F.2d 1371 (9th Cir. 1975). The district court did not file an opinion.

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. section 1254(1).

QUESTIONS PRESENTED

Although petitioner sets forth some 16 questions upon which he asks this Court to grant certiorari, the only real issue is whether this case is now moot.

STATUTE INVOLVED

18 U.S.C. §401(1) provides in relevant part:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as —
>
> "(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice. . . ."

STATEMENT OF THE CASE

The opinion of the Court of Appeals summarizes the facts of this case as follows:

> "On a petition for federal habeas corpus on a state conviction, the district judge had denied the writ without a hearing. On appeal, a division of this court remanded the case for hearing. *Cancino* v. *Craven,* 467 F.2d 1243 (9 Cir. 1972).
>
> "The district judge was trying to hold the required hearing. In March, 1973, apparently Cancino, who has served his time and was on parole, had the flu on the scheduled hearing date. But Hanson [Cancino's attorney and the petitioner here] was slow in producing a doctor's certificate.

"Out of nonappearance by Cancino and delayed appearance by his attorney, Hanson, the unhappy confrontation with the court happened. We only comment that the whole record indicates that Hanson is not too exacting of himself and the district judge lost his temper. Finally, at 11:55 a.m., Thursday, March 8, 1973, the Cancino matter came before the court. In the colloquy about the delayed hearing, the district judge announced to Hanson: 'That will be $50.00 into the library fund or one night in jail.' (Later the time for compliance was fixed at 4:45 p.m. the same day, and 'library' fund was amended to read 'attorneys' fund.')

"On the day of the event, Hanson asked no stay from the district court. He asked no stay from any of the resident circuit judges. He apparently sought no stay from any circuit judge anywhere. . . . But Hanson, without seeking a stay, paid the $50.00 into the attorneys' fund. . . ." *Cancino* v. *Craven,* 511 F.2d 1371, 1373 (9th Cir. 1975). (footnotes omitted.)

Based on the foregoing facts, the Ninth Circuit dismissed petitioner's case as moot. (Id.)

ARGUMENT

THIS CASE IS MOOT

Petitioner asks this Court to grant certiorari with respect to some sixteen issues relating to his payment of $50 to a district court attorneys' fund as the disposition of a minor contempt in that court. It is the settled rule that questions not passed upon by the Court of Appeals will not be considered by this Court. *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388, 397-98 (1971). Since the mootness was the only issue addressed by the court below, only that issue is properly raisable on the petition for writ of certiorari.

This Court's decision in *St. Pierre* v. *United States,* 319 U.S. 41 (1943), is controlling precedent for finding the present case to be moot. In *St. Pierre,* the petitioner has already satisfied the sentence imposed for a judgment of contempt and his case was found to be moot for that reason. Similarly, in this case, petitioner Hanson avoided the sanction of a day's imprisonment for contempt by paying $50 into the Central District attorneys' fund. Under similar circumstances and relying on the *St. Pierre* case, the Fifth Circuit found that the payment of a $100 fine in a contempt case had rendered the cause moot. *Murrell* v. *United States,* 253 F.2d 267 (5th Cir.), *cert. denied,* 358 U.S. 841 (1958).

No real collateral consequences attendant to the

district court action preserve this case as a live controversy. As the Ninth Circuit observed:

> "We cannot agree that the minor contretemps in which he was involved in the district court, in its context, created any possibility of impairing his political career, his possibilities of getting a judgeship, or that it conceivably could cause him to lose any clients." 511 F.2d at 1372.

It is wholly speculative and utterly remote that this single incident will impede petitioner's political or judicial ambitions or that it will affect his ability to attract clients. But for the taking of this appeal, it could safely be said that this incident would have been buried away forever in the untranscribed reporter's notes of March 8, 1973.

Even if petitioner could surmount the hurdle of mootness, there remains the unresolved question of whether his notice of appeal was timely filed. As to that question the Ninth Circuit indicated that it would need to remand the case to the district court "to consider what the record should be." 511 F.2d at 1372.

And in any event, respondent submits that petitioner fails to present an important question for decision by this Court. The Ninth Circuit concluded its opinion with the following observation:

> "This court cannot go to the hustings for Hanson in his quest of political office, cannot sponsor him for a judgeship, or advise the clients consid-

ering hiring him (about which he is concerned). But if anyone wants to know more about the case, let it be known that it did not amount to much." 511 F.2d at 1373.

Nothing in the petition for writ of certiorari elevates the issues in this case to a level or importance appropriate for decision by this Court.

CONCLUSION

For the foregoing reasons, respondent urges that the petition for writ of certiorari be denied.

Respectfully submitted,

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